

Case No. C20211194  
HON. D. DOUGLAS METCALF

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11 *Control District and Control Officer*

8 **ARIZONA SUPERIOR COURT**

9 **PIMA COUNTY**

10 Pima County Air Quality Control District  
11 and Ursula Nelson, in her capacity as the  
12 Pima County Air Quality Control District's  
13 Control Officer,

14 Plaintiffs,

15 vs.

16 Kippur Corporation, an Arizona  
17 corporation doing business as Tucson Iron  
18 and Metal,

19 Defendant.

No.

**COMPLAINT AND APPLICATION  
FOR PRELIMINARY INJUNCTION**

The Honorable

20 Plaintiffs Pima County Air Quality Control District and Ursula Nelson, in her  
21 capacity as the Pima County Air Quality Control District's Control Officer, allege as  
22 follows:

- 23 1. This Court has subject matter jurisdiction over this action.
- 24 2. Pima County is the proper venue for this action.
- 25 3. The District was established by the Pima County Board of Supervisors under  
26 the authority of A.R.S. § 49-473(B).
4. Under Pima County Code § 17.04.080, the District operates within the Pima

1 County Department of Environmental Quality.

2 5. On September 24, 2008, the United States Environmental Protection Agency  
3 (the “EPA”) delegated to the District the authority to implement and enforce the standards  
4 of performance for new stationary sources of air emissions that are in Subpart EEEE, Part  
5 60 of Title 40 of the Code of Federal Regulations.

6 6. The District has the authority to file this suit in Superior Court under A.R.S.  
7 § 49-475(2).

8 7. Ursula Nelson is the District’s Control Officer.

9 8. The Control Officer is authorized to issue permits for sources of air emissions  
10 under A.R.S. § 49-480.

11 9. Under A.R.S. § 49-512, the “county attorney, at the request of the control  
12 officer, shall file an action for...preliminary injunction, a permanent injunction or any other  
13 relief provided by law, if the control officer has reasonable cause to believe that... [a]  
14 person has violated or is in violation of any provision of this article, a rule adopted pursuant  
15 to this article or a permit issued pursuant to this article.”<sup>1</sup>

16 10. Under A.R.S. § 49-502(B), a person who violates a permit or permit  
17 condition is subject to a civil penalty of not more than ten thousand dollars per day per  
18 violation.

19 11. Defendant Kippur Corporation is an Arizona corporation doing business as  
20 Tucson Iron and Metal (“TIM”).

21 12. TIM owns and operates an “other solid waste incineration unit” (“OSWI”),  
22 as defined by 40 C.F.R. § 60.2977, located at 4484 East Tennessee Street in Tucson, AZ  
23 (the “Facility”).

24  
25  
26 <sup>1</sup> “This article” refers to A.R.S. Title 49, Chapter 3, Article 3 “County Air Pollution Control.”

1           13. The OSWI is a stationary source of air emissions and, as required by Pima  
2 County Code § 17.16.490(A)(83), is subject to the standards of performance for new  
3 stationary sources in Subpart EEEE, Part 60 of Title 40 of the Code of Federal Regulations.

4           14. Pima County Air Quality Permit number 127 (the “Permit”) authorizes TIM  
5 to operate the OSWI under general and specific conditions.<sup>2</sup>

6           15. On September 10, 2015, TIM petitioned the EPA for approval of a dry  
7 sorbent (Trona) scrubber (“sorbent injection system”) with operating parameter limits as  
8 an alternative control device for the emission of sulfur dioxide and hydrogen chloride gas  
9 in lieu of a Wet Gas Scrubber that is required by NSPS Subpart EEEE.

10           16. The EPA conditionally approved the petition for the sorbent injection system  
11 on September 27, 2016 with operating parameter limits that include the requirements that  
12 TIM maintain a minimum temperature of 1,400 degrees Fahrenheit in the incinerator  
13 secondary combustion chamber of the OSWI, operate a Continuous Emissions Monitoring  
14 System (CEMS) for carbon monoxide and oxygen, and limit the maximum feed rate into  
15 the incinerator of 2030 pounds per hour of contraband. *See* letter from EPA to Gary Kippur  
16 dated September 27, 2016 attached as Exhibit A.

17           17. On March 26, 2018, the Control Officer renewed the Permit as authorized  
18 under A.R.S. § 49-480.

19           18. The Permit incorporates the operating parameter limits for the sorbent  
20 injection system that the EPA approved on September 27, 2016. *See* Permit Section 3 ¶¶  
21 52, 64.

22           19. The Permit requires TIM to “comply with all conditions of this permit  
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24 \_\_\_\_\_  
25 <sup>2</sup> The Permit is available at:  
26 [https://webcms.pima.gov/UserFiles/Servers/Server\\_6/File/Government/Environmental%20Quality/Air/AQ%20Operating%20Permits/All%20Current%20Permits/Class%20I/127/127-Permit.pdf](https://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/Environmental%20Quality/Air/AQ%20Operating%20Permits/All%20Current%20Permits/Class%20I/127/127-Permit.pdf) (last visited March 15, 2021).

including all applicable requirements of the Arizona air quality statutes and Pima County air quality rules.” Permit General Conditions ¶ 2.

20. The Permit requires TIM to operate and maintain the OSWI in accordance with the approved Operation and Maintenance Plan which is part of the Permit (the “O&M Plan”)<sup>3</sup>. Permit Section 3 ¶ 51(b).

21. Beginning on or about December 11, 2019, TIM has violated and continues to violate the conditions of the Permit.

22. Since January 8, 2020, the District has issued TIM six Notice of Violations and requested TIM take corrective actions to address the violations.

23. TIM has failed to maintain and operate the OSWI in compliance with the Permit.

24. The Control Officer has requested that the Pima County Attorney’s Office file an action for a preliminary and permanent injunction requiring TIM to cease operation of the OSWI until TIM takes corrective action necessary to comply with the Permit.

**Permit Violations Noticed on January 8, 2020**

25. The Permit requires TIM to operate and maintain a sorbent injection system at the OSWI in order “to control all process off-gases formed during incineration.” Permit Section 3 ¶ 52(b).

26. The Permit requires TIM to notify the Control Officer within 24 hours of any emissions in excess of the limits established by the Permit and provide the Control Officer with an excess emissions report within 72 hours of the notice. Permit General Conditions, ¶ 11(a)(i)(a).

<sup>3</sup> The O&M Plan is available:  
[https://webcms.pima.gov/UserFiles/Servers/Server\\_6/File/Government/Environmental%20Quality/Air/AQ%20Operating%20Permits/All%20Current%20Permits/Class%20I/127/127-OSWI-O-&-M-Plan.pdf](https://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/Environmental%20Quality/Air/AQ%20Operating%20Permits/All%20Current%20Permits/Class%20I/127/127-OSWI-O-&-M-Plan.pdf) (last visited March 15, 2021).

1           27.    The O&M Plan requires that the secondary combustion chamber at the OSWI  
2 “shall be maintained at a minimum of 1,400 degrees Fahrenheit.” Permit Section 3 ¶ 52(c);  
3 O&M Plan, Section V(C).

4           28.    On December 11, 2019, an inspector for the District inspected the Facility  
5 and observed that TIM failed to operate and maintain the sorbent injection system during  
6 an incineration event in the OSWI.

7           29.    During the inspection, the inspector also observed that the TIM did not  
8 maintain the secondary combustion chamber at the OSWI at a minimum temperature of  
9 1,400 degrees Fahrenheit.

10          30.    TIM’s failure to operate and maintain the sorbent injection system on  
11 December 11, 2019 resulted in emissions in excess of the limitations allowed in the Permit.

12          31.    TIM provided the Control Officer with timely notice of the excess emissions  
13 on December 11, 2019 but failed to provide the Control Officer with an excess emissions  
14 report that complies with the Permit within 72 hours of the notice.

15          32.    TIM’s failure to operate and maintain the sorbent injection system at the  
16 OSWI is a violation of the Permit.

17          33.    TIM’s failure to maintain a minimum temperature of 1,400 degrees  
18 Fahrenheit in the secondary combustion chamber at the OSWI as required by the O&M  
19 Plan is a violation of the Permit.

20          34.    TIM’s failure to provide the Control Officer with an excess emissions report  
21 that complies with the Permit within 72 hours is a violation of the Permit.

22          35.    On January 8, 2020, the District issued TIM Notice of Violation number  
23 PC1912-048 and requested TIM take corrective actions.

24                   **Permit Violations Noticed on May 29, 2020**

25          36.    The Permit requires TIM to conduct annual performance testing of the  
26 OSWI. Permit Section 3 ¶ 57.

1           37. The Permit requires TIM to “install, calibrate, maintain, and operate [the  
2 “CEMS”] for carbon monoxide and for oxygen.” Permit Section 3 ¶ 59(a).

3           38. The O&M Plan requires TIM to conduct an annual Relative Accuracy Test  
4 Audit (“RATA”) of the CEMS unit. O&M Plan Section V(E).

5           39. As of May 29, 2020, TIM failed to complete an annual performance test of  
6 the OSWI since April 24, 2019.

7           40. As of May 29, 2020, TIM failed to complete a RATA of the CEMS unit since  
8 April 24, 2019.

9           41. TIM’s failure to complete an annual performance test within 12 months of  
10 the April 24, 2019 performance test is a violation of the Permit.

11           42. TIM’s failure to complete a RATA of the CEMS within 12 months of the  
12 April 24, 2019 RATA is a violation of the Permit.

13           43. On May 29, 2020, the District issued TIM Notice of Violation number 127-  
14 0008T and requested TIM take corrective actions.

15                           **Permit Violations Noticed on July 22, 2020**

16           44. The Permit requires TIM to maintain and operate all equipment in a manner  
17 consistent with good air pollution control for minimizing emissions. Permit Section 4 ¶ 70.

18           45. The Permit requires that all emissions from the OSWI be drawn through the  
19 afterburner, cooling towers, and baghouses for final emissions control. Permit Section 3 ¶  
20 51(d).

21           46. The Permit requires that TIM provide written notice to the Control Officer  
22 within 7 days of any changes to the OSWI. Permit General Condition ¶ 16(d).

23           47. On or about June 4, 2020, TIM notified the District that TIM had made  
24 changes to the CEMS on December 4, 2019.

25           48. On June 3, 2020, an inspector for the District inspected the Facility. The  
26 inspector observed emissions in the form of black and white smoke from the feed opening

of the OSWI while an incineration event was in process. The inspector also observed multiple cracks on the exhaust train of the OSWI.

49. Based on her observations, the inspector determined that emissions from the OSWI on June 3, 2020 were not drawn through the afterburner, cooling towers, and baghouses.

50. Based on her observations, the inspector determined that on June 3, 2020 TIM failed to maintain and operate the OSWI unit in a manner consistent with good air pollution control for minimizing emissions.

51. TIM's failure to notify the District of the changes to the CEMS made on December 4, 2019 within 7 days is a violation of the Permit.

52. TIM's failure to maintain and operate the OSWI so that all emissions are drawn through the afterburner, cooling towers, and baghouses is a violation of the Permit.

53. TIM's failure to maintain and operate the OSWI unit in a manner consistent with good air pollution control for minimizing emissions is a violation of the Permit.

54. On July 22, 2020, the District issued TIM Notice of Violation number 127-0002I and requested TIM take corrective actions.

### **Permit Violations Noticed on November 10, 2020**

55. The Permit limits the total mass basis of dioxins/furans emitted from the OSWI to 33 nanograms per dry standard cubic meter. Permit Section 3 ¶ 51, Table 1.

56. The EPA has determined that human exposure to emissions of dioxin/furans may produce a wide variety of health effects including irritation of the lungs, skin and mucous membranes, problems with the central nervous system, kidney damage, and cancer.<sup>4</sup>

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<sup>4</sup> See Fact Sheet Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Other Solid Waste Incineration Units (November 30, 2005), publicly available at <https://www.epa.gov/stationary-sources-air-pollution/other->

1           57. During the annual performance test of the OSWI on September 9 and 10,  
2 2020, the OSWI emitted a total mass basis of dioxins/furans of 1,194 nanograms per dry  
3 standard cubic meter.

4           58. TIM notified the Control Officer of the excess emissions of dioxins/furans  
5 on or about November 17, 2020.

6           59. TIM failed to provide the Control Officer with an excess emissions report  
7 that complies with the Permit within 72 hours of the notice.

8           60. The excess emissions of dioxins/furans from the OSWI is a violation of the  
9 Permit.

10          61. TIM's failure to notify and report the excess emissions of dioxins/furans to  
11 the Control Officer within 24 hours is a violation of the Permit.

12          62. TIM's failure to provide the Control Officer with an excess emissions report  
13 that complies with the Permit within 72 hours of the notice of the excess emissions is a  
14 violation of the Permit.

15          63. On November 10, 2020, the District issued TIM Notice of Violation number  
16 127-0009T and requested TIM take corrective actions.

17          64. On November 24, 2020, TIM conducted another performance test of the  
18 OSWI. During the test, the OWSI emitted a total mass basis of dioxins/furans of 251  
19 nanograms per dry standard cubic meter.

20          65. TIM is in violation of the Permit for exceeding the emissions limitation of  
21 dioxins/furans from the OSWI.

22                   **Permit Violations Noticed on February 16, 2021**

23          66. The Permit limits the volume of carbon monoxide that is emitted from the  
24 OSWI to 40 parts per million. Permit Section 3 ¶ 51, Table 1.

25 \_\_\_\_\_  
26 solid-waste-incineration-oswi-units-standards-performance-new (last visited March 15,  
2021).



67. On January 12, 2021, TIM notified the Control Officer that during a six-hour incineration event on January 12, 2021, the OSWI emitted an average volume of carbon monoxide of 497.2 parts per million.

68. During a one-hour period of the incineration event, the volume of carbon monoxide emitted from the OSWI ranged from 328.4 parts per million to 957.3 parts per million.

69. TIM provided the Control Officer with timely notice of the excess emissions on January 12, 2021 but failed to provide the Control Officer with an excess emissions report that complies with the Permit within 72 hours of the notice.

70. The excess emissions of carbon monoxide from the OSWI on January 12, 2021 is a violation of the Permit.

71. TIM's failure to provide the Control Officer with an excess emissions report that complies with the Permit within 72 hours of the notice of excess emissions is a violation of the Permit.

72. On February 16, 2021, the District issued TIM Notice of Violation number 127-0021R and requested TIM take corrective actions.

### **Permit Violations Noticed on March 2, 2021**

73. On February 1, 2021, TIM submitted to the District a semiannual compliance certification report on excess emissions at the Facility for the period from July 1, 2020 through December 31, 2020.

74. The report documented that during more than half the incineration events from September 16, 2020 through December 9, 2020, the OSWI exceeded the emission limitation of 40 parts per million of carbon monoxide within a 12-hour rolling average period.

75. The Permit requires that TIM submit to the District an annual compliance certification for the OSWI that, *inter alia*, describes the status of the OSWI with respect to

1 each permit condition. Permit General Condition ¶ 7.

2 76. On February 1, 2021, TIM submitted to the District an annual compliance  
3 certification for the Facility that failed to include information required by the Permit.

4 77. The excess emissions of carbon monoxide from the OSWI during multiple  
5 incineration events from September 16, 2020 through December 09, 2020 are violations of  
6 the Permit.

7 78. The failure of TIM to provide an annual compliance certification for the  
8 OSWI that provides information required by the Permit is a violation of the Permit.

9 79. On March 2, 2021, the District issued TIM Notice of Violation number 127-  
10 0017R and requested TIM take corrective actions.

11 80. TIM's past and ongoing violations of the Permit entitle the District, under  
12 A.R.S. §§ 49-512 and 12-1801(3), to the remedy of an injunction requiring TIM to cease  
13 operation of the OSWI until TIM takes corrective action necessary to comply with the  
14 Permit and O&M Plan.

15 81. TIM's violations of the Permit subject TIM, under A.R.S. §§ 49-502(B), to  
16 a civil penalty of ten thousand dollars per day per violation.

17 Therefore, the District and the Control Officer respectfully request that the Court:

18 A. Set a telephonic hearing for a preliminary injunction ordering TIM to  
19 immediately comply with the Permit or to cease operating the Facility

20 B. Order that the trial on the merits of this matter be accelerated and  
21 consolidated with the hearing on the District and Control Officer's Application for  
22 Preliminary Injunction, pursuant to Rule 65(a)(2), Ariz. R. Civ. P.

23 C. Enter a finding that the TIM's failure to comply with the Permit is unlawful.

24 D. Enter a permanent injunction ordering TIM to cease operation of the OSWI  
25 until TIM takes corrective action necessary to comply with the Permit and O&M Plan.

26 E. Grant judgment in favor of the District and the Control Officer for its costs

1 incurred in this matter.

2 F. Award the District and Control Officer civil penalties in an amount not  
3 exceeding \$10,000.00 per day per violation of the Permit as authorized by A.R.S. § 49-  
4 502(B).

5 G. Award such other and further relief as the Court deems just and appropriate  
6 under the circumstances.

7 RESPECTFULLY SUBMITTED March 16, 2021.

8 LAURA CONOVER  
9 PIMA COUNTY ATTORNEY

10  
11 By /s/ Michael LeBlanc  
12 Michael LeBlanc  
13 Deputy County Attorney  
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LAURA CONOVER  
PIMA COUNTY ATTORNEY  
CIVIL DIVISION



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

SEP 27 2016

Mr. Gary Kippur  
President  
Tucson Iron and Metal  
P.O. Box 28898  
Tucson, Arizona 85726

RE: Petition for Approval for Operating Parameter Limits (OPLs) in Lieu of a Wet Scrubber and Related Plan - Other Solid Waste Incinerators (OSWI), New Source Performance Standards (NSPS) Subpart EEEE - Tucson Iron and Metal (TIM), Tucson, Arizona Contraband Incinerator

TIM constructed a dual chamber, commercial incinerator which thermally destroys contraband for U.S. Department of Homeland Security Customs and Border Protection (CBP) and other law enforcement agencies at the TIM facility located in Tucson, Arizona. The incinerator is subject to the requirements of NSPS EEEE of C.F.R. Part 60 - Standards of Performance for Other Solid Waste Incineration Units for Which Construction Is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006. TIM submitted a petition pursuant to 60.291, which states "If you use an air pollution control device other than a wet scrubber... you must petition EPA for specific operating limits, the values of which are to be established during the initial performance test and then continuously monitored thereafter." Given the information submitted, the US Environmental Protection Agency (EPA) conditionally approves your request, as delineated in this letter, to use a dry sorbent (Trona) scrubber in place of the Wet Gas Scrubber (WGS) required by NSPS EEEE.

The September 10, 2015 correspondence include a petition for TIM to implement OPLs in lieu of installing a wet scrubber. In the petition, TIM outlined the following specific proposed OPLs to be monitored in accordance with the information required by 40 C.F.R. § 60.2917 (a)-(e):

- Monitoring feed rate into the Incinerator, up to a maximum load of 2030 pounds per hour (lb/hr) of contraband, including the associated packaging;
- Maintaining a minimum temperature of 1400 degrees Fahrenheit (°F) in the incinerator secondary combustion chamber;
- Monitoring and recording the sorbent feed in 15 to 20 minute increments to provide the hourly sorbent feed rate for abatement, as well as maintaining a minimum sorbent injection rate of 30 lb/hour.
- Continuously measuring and recording the CO and O<sub>2</sub> concentrations in the incinerator stack with a commissioned CEMS.

In your petition, the following information was presented: the relationship between the proposed OPLs and applicable emission rates and limits; how the upper and lower OPL range limits will be established; the methods that will be used to monitor and measure the OPLs; and, the frequency and methods for instrument

recalibration. The proposed OPLs are consistent with the special conditions of Air Permit Number 127, issued by PDEQ on April 22nd, the equipment configuration of the Incinerator, and the operation of the associated alternate pollution control device (i.e. fabric filter baghouse).

Based on the information submitted, EPA conditionally approves TIM's petition for the proposed OPLs, contingent on the successful completion of the initial performance testing. This conditional approval is site-specific to the OSWI unit at the TIM facility in Tucson, Arizona. If you have any questions or concerns about this conditional approval, please contact Nathan Dancher or my staff, at 415-972-3482, or at [dancher.nathan@epa.gov](mailto:dancher.nathan@epa.gov).

Sincerely,



Joel Jones, Assistant Director  
Enforcement Division

cc: Irvin Bilsky, Bilsky Environmental  
Rupesh Patel, Air Permit Manager, Pima County Department of Environmental Quality  
James M. Jones, Senior Air Permit Engineer, Pima County Department of Environmental Quality